

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LOCAL UNION NO. 825, affiliated with the INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, and THE BOARD OF TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 825 PENSION FUND, THE IUOE LOCAL 825 WELFARE FUND, THE IUOE LOCAL 825 APPRENTICESHIP TRAINING AND RETRAINING FUND, THE IUOE LOCAL 825 SUPPLEMENTAL UNEMPLOYMENT BENEFIT FUND, THE IUOE LOCAL 825 SAVINGS FUND, THE IUOE LOCAL 825 ANNUITY FUND,

Plaintiffs

vs.

LANDSCAPE UNLIMITED, INC.

Defendant

Civil Action No.: 08-CV-00590  
(SCR)

**ANSWER TO COUNTERCLAIM**

Plaintiff/Defendant-Counterclaimant, Local Union No. 825, through its attorneys, Cohen, Leder, Montalbano & Grossman (Paul A. Montalbano appearing) in answer to Defendant's Counterclaim, does hereby state:

1. Plaintiff/Defendant-Counterclaimant, Local Union No. 825, denies the allegations set forth in paragraph 56 of the Complaint and Counterclaim, but states that representatives of Local 825 did meet with representatives of Defendant and agreed that two key members of Landscape Unlimited, Inc., (that is the principal's two sons) who are members of Local 137, Operating Engineers, would be permitted to apply for and clear in

for work opportunities through the Local 825 Hiring Hall and that the balance of the work compliment would be composed of members directly through Local 825. Plaintiff/Defendant-Counterclaimant, Local Union No. 825, further states that all terms and conditions of employment at the job site is under the jurisdiction of the Local 825 contract and requires that all bargaining unit employees be paid wages and benefits pursuant to the terms and conditions of the Local 825 collective bargaining agreement.

2. Plaintiff/Defendant-Counterclaimant, Local Union No. 825, denies the allegations set forth in paragraph 57 of the Counterclaim.

**AFFIRMATIVE DEFENSES:**

1. Defendant/Plaintiff-Counterclaimant, Landscape Unlimited, Inc., has failed to properly plead issues of Jurisdiction and Venue.
2. Defendant/Plaintiff-Counterclaimant, Landscape Unlimited, Inc., has failed to state a cause of action for which relief may be granted.

WHEREFORE, for all of the above reasons, Plaintiff/Defendant-Counterclaimant, Local Union No. 825, demands that judgment be entered dismissing the Counterclaim in its entirety together with counsel fees, costs, and such other relief as the Court deems just and proper.

COHEN, LEDER, MONTALBANO & GROSSMAN, LLC  
Attorneys for Plaintiff/Defendant-Counterclaimant, Local Union No. 825

By:   
PAUL A. MONTALBANO

Dated: March 28, 2008